Report From Agency

PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING ADOPTING RULES

The Wisconsin Department of Financial Institutions proposes an order to repeal and recreate ch. DFI—Bkg 77 relating to pawnbrokers.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statute(s) interpreted: s. 138.10(15), Stats.

Statutory authority: ss. 138.10(2m), 220.02(2) and (3), and 227.11(2), Stats.

Related statute or rule: s. 138.09, Stats.

Explanation of agency authority: Pursuant to ss. 138.09, 138.10(2m) and (15), 220.02(2) and 220.02(3), Stats., the department regulates pawnbrokers.

Summary of proposed rule: The objective of the rule is to repeal and recreate ch. DFI—Bkg 77. Currently ch. DFI—Bkg 77 relates to the "Consumer Credit Review Board." However, this chapter is no longer necessary and should be repealed because this board was legislatively abolished. Currently pawnbrokers are subject to regulation under s. 138.10, Stats. However, 2005 Wisconsin Act 158 provides that, effective October 1, 2006, if a pawnbroker registers as a licensed lender under s. 138.09, Stats., the pawnbroker is exempt from the requirements of s. 138.10, Stats. The purpose of this rule is to set forth, in the recreated ch. DFI—Bkg 77, matters pertaining to the regulation of pawnbrokers, including definitions, hours and days of operation, holding periods, law enforcement requests and orders, notice of sales, effect of nonredemption, agreements and extensions, prohibited practices, and lost or damaged goods.

Summary of and preliminary comparison with existing or proposed federal regulation: None.

Comparison with rules in adjacent states: Illinois has promulgated rules regarding pawnbrokers. These rules cover licensing, pawn broking forms, hearings, orders, penalties, revocations and suspensions of licenses. Michigan and Minnesota have statutes regulating pawn broking but have not promulgated rules. Iowa has passed no statutes nor promulgated any rules regarding pawnbrokers.

Summary of factual data and analytical methodologies: The department reviewed its regulatory practices and procedures, and solicited input from affected entities to determine the necessary regulations.

Analysis and supporting documentation used to determine effect on small business: The proposed rule will have no adverse impact on small businesses; indeed, the rule lessens regulatory burdens for these businesses. Because the legislature removed pawnbrokers licensed as loan companies under s. 138.09, Stats., from having to comply with s. 138.10, Stats., there has been a significant reduction in requirements imposed on these pawnbrokers that were placed upon them by s. 138.10. Some provisions, including the law enforcement provisions, provided for within the rule are related to current statutory requirements already imposed on these pawnbrokers. Lastly, there is a small number of entities that are affected by this rule. That number permits the department to contact each, at some point during the promulgation of this rule, for their input. Reviews by these entities to-date indicate that most of the provisions of these rules reflect current practices.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments regarding the proposed rule may also be submitted via the department's website contact page, e-mail the secretary. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 266-0451.

Pursuant to the statutory authority referenced above, the Wisconsin Department of Financial Institutions, Division of Banking adopts the following:

SECTION 1. Chapter DFI—Bkg 77 is repealed and recreated to read:

DFI – Bkg 77.01 Scope. This rule applies to any person licensed under s. 138.09 who is operating as a pawnbroker.

DFI – Bkg 77.02 Definitions. In this chapter:

(1) “Hold order” means an order issued by a local, state or federal law enforcement agency directing a pawnbroker to hold any tangible pledged personal property for purposes of further investigation by the agency.

(2) "Pawnbroker" includes any person who engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness, or who purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(3) "Pawn ticket" means the card, book, receipt or other record furnished to the pledgor at the time a loan is granted containing the terms of the contract for a loan.

(4) "Person" includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized.

(5) "Pledge" means an article or articles deposited with a pawnbroker as security for a loan in the course of the pawnbroker's business as defined in sub. (2).

(6) "Pledgor" means the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawnbroker, unless the person discloses that he or she is or was acting for another in which case a “pledgor” means the disclosed principal.

DFI – Bkg 77.03 Hours and days of operation. (1) A pawnbroker shall not be open for business on any day prior to 8:00 a.m. or after 8:00 p.m.

(2) A pawnbroker’s normal business hours shall be posted in the licensed office and visible from the main public entrance of the pawnbroker’s place of business.

(3) If a pawnshop is closed on the last day that the pledgor may redeem a pledge, the pledgor shall have until the close of business on the next day the pawnshop is open to redeem the pledged goods or renew or extend the pawn transaction.

DFI – Bkg 77.04 Holding period. No unredeemed pledge may be sold before the expiration of 30 days after the original or extended maturity date of the loan.

DFI – Bkg 77.05 Law enforcement requests and orders. (1) Every pawnbroker shall provide to or make available for inspection by local, state and federal law enforcement agencies the records of all pledges received. The pawnbroker shall comply with the requests of these agencies regarding the frequency and means of the records reporting.

(2) A hold order shall be effective upon written or verbal notification to the pawnbroker by a local, state or federal law enforcement agency. No sale or other disposition may be made of any tangible personal property deposited with or in the custody of the pawnbroker while the hold order remains in effect.

DFI – Bkg 77.06 Notice of sale. A pawnbroker shall not sell any pledge unless notice of the sale has been forwarded to the pledgor at the address given by the pledgor at the time of obtaining the loan or to a new address of the pledgor, as shown in the pawnbroker's record. Notice of the sale shall be mailed to the pledgor not less than 30 days prior to the date of sale. The notice shall state the total amount of principal, interest and charges due on the loan as of the date of the notice.

DFI – Bkg 77.07 Effect of nonredemption. A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within 30 days after the original or extended maturity date of the loan shall automatically be forfeited to the pawnbroker.

DFI – Bkg 77.08 Agreements and extensions. (1) A pawnbroker and pledgor may agree to one or more extensions of a pawn transaction. The agreement shall be in writing and signed by the pledgor. A copy of the agreement shall be given to the pledgor.

(2) The agreement shall disclose the pawn ticket number, the date of the extension agreement, the extended due date, the dollar amount collected on the date of the extension agreement, the dollar amount extended, the dollar amount of the finance charge to be paid for the extension period, the total amount due on the extended due date, and the notice required by s. 422.303(3), Stats.

(3) The annual percentage rate of finance charge assessed on the unpaid balance of the amount financed during the extension period may not exceed the annual percentage rate of finance charge disclosed in the pawn transaction.

DFI – Bkg 77.09 Prohibited practices. A pawnbroker shall not do any of the following:

(1) Accept a pledge of a vehicle of a type for which a certificate of title is required.

(2) Fail to exercise reasonable care to protect pledged goods from loss or damage.

(3) Fail to return pledged goods to a pledgor or seller when the pledgor or seller pays the full amount due the pawnbroker within 30 days of the original or extended maturity date of the loan, or the pledged goods have been taken into custody by a court or local, state or federal law enforcement agency.

DFI—Bkg 77.10 Lost or damaged goods. A pawnbroker shall compensate the pledgor, in cash or replacement goods acceptable to the pledgor, for the fair market value of a pledge lost or damaged while in possession of the pawnbroker.

Effective date. This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____ Agency:_____

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